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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING  
whether there has been a violation of the  
Securities Act of Washington by:

DAN D. DYER, JR,

Respondent.

Order No. S-03-009-03-SC01

STATEMENT OF CHARGES AND NOTICE  
OF INTENT TO ENTER AN ORDER TO  
CEASE AND DESIST, REVOKE  
REGISTRATION, IMPOSE FINES, AND  
CHARGE COSTS

THE STATE OF WASHINGTON TO:

DAN D. DYER, JR, CRD #3114380  
1119 PACIFIC AVE, STE 300  
TACOMA, WA 98402

**STATEMENT OF CHARGES**

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondent Dan D. Dyer, Jr. has violated the Securities Act of Washington. The Securities Administrator believes those violations justify the revocation of Dan D. Dyer, Jr.'s securities salesperson registration pursuant to RCW 21.20.110(1) and the entry of an order pursuant to RCW 21.20.390 to cease and desist from such violations. The Securities Administrator further believes such violations justify the entry of an order against the Respondent imposing fines and charging costs pursuant to RCW 21.20.110. The Securities Administrator finds as follows:

**TENTATIVE FINDINGS OF FACT**

**RESPONDENT**

1. At all times material to this action, Dan D. "Duff" Dyer, Jr. ("Duff Dyer") was a registered securities salesperson with C.J.M. Planning Corp. ("CJM Planning"), a registered broker-dealer headquartered in Pompton Lakes, NJ. Duff Dyer was employed by CJM Planning from August 18, 1998

STATEMENT OF CHARGES AND NOTICE OF INTENT  
TO ENTER AN ORDER TO CEASE AND DESIST,  
REVOKE REGISTRATION, IMPOSE FINES, AND CHARGE  
COSTS

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DEPARTMENT OF FINANCIAL INSTITUTIONS  
Securities Division  
PO Box 9033  
Olympia, WA 98507-9033  
360-902-8760

1 through December 9, 2002. At all times material to this action, Duff Dyer shared an office in Tacoma,  
2 WA with his father, Daniel D. Dyer, and his father's company, Oxbow Capital Partners LLC. From  
3 December 20, 2002 to the present, Duff Dyer has been employed by KMS Financial Services, Inc. a  
4 registered broker-dealer headquartered in Seattle, WA. Duff Dyer has been registered as a securities  
5 salesperson with the Washington State Securities Division since December 10, 1998. Duff Dyer resides  
6 in University Place, WA.

### 7 **RELATED ENTITIES AND INDIVIDUALS**

8 2. Oxbow Capital Partners, LLC ("Oxbow Capital") is a Washington limited liability  
9 company with its principal place of business in Tacoma, WA. Oxbow Capital was formed in June 1998  
10 as an investment banking and venture capital firm. Oxbow Capital is wholly owned and controlled by  
11 Daniel D. Dyer. Oxbow Capital is not currently registered under the Securities Act of Washington, RCW  
12 chapter 21.20, as an investment adviser or securities broker-dealer in the State of Washington and has not  
13 been previously so registered.

14 3. Daniel D. Dyer ("Dan Dyer"), Duff Dyer's father, is a resident of University Place, WA.  
15 Dan Dyer is the manager and sole owner of Oxbow Capital. Dan Dyer is not currently registered under  
16 the Securities Act of Washington, RCW chapter 21.20, as a securities salesperson, investment adviser or  
17 investment adviser representative in the State of Washington and has not been previously so registered.

18 4. Capital Consultants, LLC ("CCL") was a federally registered investment adviser with its  
19 principal place of business in Portland, OR until August 2001 when the U.S. Securities and Exchange  
20 Commission ("Commission") revoked its license. On September 21, 2000, the Commission filed a  
21 complaint in the District Court of Oregon against CCL and its principals alleging they were "operating an  
22 undisclosed Ponzi scheme using client funds to make interest payments to clients invested in a failed and

1 bankrupt \$160 million loan that Capital Consultants made to Wilshire Credit Corp. (U.S. Securities and  
2 Exchange Commission, Lit. Rel. 16720, Sept. 21, 2000).”

3 5. C.J.M. Planning Corp. (“CJM Planning”) is a registered broker-dealer headquartered in  
4 Pompton Lakes, NJ. CJM Planning is a broker-dealer specializing in the sale of mutual funds through a  
5 network of independent salespersons. In July 1998, Oxbow Capital acquired sole ownership of CJM  
6 Planning. CCL loaned Oxbow Capital the \$10,000,000 purchase price of CJM Planning.

7 6. Washington Motorcycle Partners LLC (“WMP”) is a Washington limited liability company  
8 (“LLC”) that was formed on September 24, 1999 by Dan Dyer. Pursuant to the LLC agreement, WMP is  
9 a member-managed LLC with Dan Dyer serving as the sole manager and member. From at least August  
10 1999 through September 2000, Dan Dyer, primarily through two CJM Planning registered  
11 representatives, offered and sold unregistered interests in WMP. Dan Dyer raised over \$4,000,000 from  
12 more than 200 investors across the country. Representatives sold WMP interests, telling investors they  
13 were purchasing pre-initial public offering (“pre-IPO”) shares of Indian Motorcycle Company. WMP is  
14 not currently registered to sell securities in the State of Washington and has not been previously so  
15 registered.

16 7. Indian Motorcycle Company (“IMC”) is a Delaware corporation headquartered in Gilroy,  
17 CA. IMC was originally formed in 1901 in Springfield, MA. IMC ceased production of motorcycles in  
18 1953. In 1998, IMC was revived and resumed production of its motorcycles in 1999. On September 19,  
19 2003, IMC closed its factory in Gilroy, CA due to lack of investment capital. IMC is not currently  
20 registered to sell securities in the State of Washington and has not been previously so registered.

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**NATURE OF RESPONDENT'S CONDUCT**

**Securities and Exchange Commission Civil Action**

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8. On July 16, 2003, the Commission filed a complaint against Dan Dyer and Oxbow Capital. The Commission filed a civil action in the U.S. District Court for the District of Oregon (*Securities and Exchange Commission v. Dyer et al*, Civil Action No. CV 03-968 (D. Ore.)). The Commission's action alleges that Dan Dyer and Oxbow Capital aided and abetted a "massive Ponzi-like scheme" perpetrated by CCL. The complaint also alleges Dan Dyer and Oxbow Capital violated federal securities laws by offering and selling at least two unregistered securities offerings, Oxbow Capital 1999 Fund I, LLC ("Fund I") and WMP. The Commission alleges Dan Dyer and Oxbow Capital violated federal anti-fraud and securities registration laws. The Commission is seeking an injunction, disgorgement of ill-gotten gains, and civil penalties. The Commission's action does not name Duff Dyer as a respondent.

**Duff Dyer's Conduct**

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9. From at least October 1999 through July 2000, while employed by CJM Planning as a securities salesperson, Duff Dyer offered and sold purported pre-initial public offering ("pre-IPO") shares of IMC to at least ten Washington residents, raising a total of approximately \$164,375. Duff Dyer also offered and sold this investment opportunity to at least three Utah residents, raising a total of approximately \$58,600. Oxbow Capital records also attribute to Duff Dyer the sale of an additional approximately \$314,498 in WMP investment proceeds. These proceeds were generated from sales to approximately 13 other investors, including residents of Arizona, New York, New Jersey, California and Louisiana.

1           10. Duff Dyer offered potential investors an opportunity to purchase IMC at \$3 per share. He  
2 described the investment to at least one investor as an “incredible” opportunity to “get in on the ground  
3 floor” of IMC. In December 1999, he represented to a number of potential investors that IMC would  
4 conduct an IPO “within a month or two.” He represented that the offering price of IMC would be  
5 between \$12 and \$15 per share, an immediate return of at least four times their initial investment.

6           11. Duff Dyer did not provide investors with a prospectus, memorandum or any other  
7 document disclosing the details of the investment opportunity. In many cases, investors did not  
8 understand until after they made their investment that they had not purchased IMC shares, but had  
9 instead purchased units of WMP (the “membership interests”). Dan Dyer created a subscription booklet  
10 for WMP investors by duplicating a booklet created for the March 1999 offering of Fund I. Duff Dyer  
11 provided these subscription booklets to WMP investors. The subscription booklet provided to investors  
12 references the “Operating Agreement dated March 5, 1999 and the Confidential Private Placement  
13 Memorandum dated March 5, 1999.” When one Washington investor asked to receive these documents,  
14 Duff Dyer told him that they were not available. In fact, no such documents existed for WMP. Dan  
15 Dyer created a “Confidential Information Memorandum” for WMP by duplicating three pages of  
16 standard legal disclosure from an IMC offering prospectus. Duff Dyer provided the Confidential  
17 Information Memorandum to WMP investors.

18           12. Duff Dyer failed to disclose what investors would receive for their investment in WMP. It  
19 was not until after they invested that they received a letter from Dan Dyer stating that each \$3 unit of  
20 WMP would convert to IMC stock at \$3 per share. The letter represented that the conversion would take  
21 place if IMC was sold or conducted an IPO (the “IMC liquidity event”).

1           13. Duff Dyer failed to disclose to investors that WMP did not own a single asset, nor did it  
2 have title to any shares of IMC. Although Dan Dyer and Oxbow Capital owned shares of IMC, those  
3 shares were not transferred to WMP. In addition, some of those shares were encumbered by CCL. The  
4 total shares of IMC owned by Dan Dyer and Oxbow Capital were insufficient to satisfy the obligations to  
5 WMP and Fund I investors in the event of an IMC liquidity event. In addition, Duff Dyer failed to  
6 disclose that Dan Dyer purchased the IMC shares for \$1 per share, while they were selling WMP  
7 membership interests for \$3 per share.

8           14. Duff Dyer instructed investors to make their checks payable to Oxbow Capital, rather than  
9 WMP. The checks were deposited into the general business checking account for Oxbow Capital. Duff  
10 Dyer failed to disclose to investors the planned or actual use of investment proceeds from the sale of  
11 WMP membership interests. Specifically, he failed to disclose that the investment proceeds were used to  
12 make payments to Dan Dyer and his personal creditors, to CCL, to Oxbow Capital's creditors and to  
13 Duff Dyer himself.

14           15. The WMP subscription agreement represented that after \$500,000 in subscriptions were  
15 received by the managing member, a closing would be held at which time the investors would be  
16 admitted as members of the fund. Investors also were asked to sign a purported counterpart signature  
17 page to the WMP "Operating Agreement." Despite these representations, no evidence exists that a  
18 closing was ever held, despite the fact that over \$4,000,000 was invested in WMP. There is also no  
19 evidence that investors were admitted as members of the WMP limited liability company. In October  
20 2000, investors received a "membership unit certificate" that showed the total number of WMP units  
21 owned.

1           16. The WMP subscription agreement included an investor questionnaire to determine if an  
2 investor was an “accredited investor” as defined by federal law. An individual is deemed “accredited” if  
3 he or she has a net worth of at least \$1 million, personal income of more than \$200,000 for the previous  
4 two years or joint annual income of more than \$300,000. Duff Dyer failed to inquire into the financial  
5 situation, ability to bear the loss of the investment principal or the financial sophistication of the WMP  
6 investors. Some investors told Duff Dyer that they did not meet the accredited investor definition. He  
7 instructed those investors to complete the form to falsely represent themselves as accredited investors.

8           17. No IPO of IMC stock was conducted. In response to investor inquiries in 2000 and 2001,  
9 Duff Dyer represented that IMC was doing well, but that the market for IPOs was not favorable.  
10 Periodically, investors received form letters from Dan Dyer with enclosed copies of newspaper articles  
11 on IMC. In a letter dated October 17, 2000, Dan Dyer reassured investors saying, “IMC is doing very  
12 well” and “all signals are positive for the outlook of the company and a forth coming IPO.” Dan Dyer  
13 and Duff Dyer failed to disclose that WMP investor funds had not been utilized to purchase additional  
14 shares of IMC stock and WMP did not have title to a single share of IMC stock.

15           18. The sale of WMP membership interests was not recorded on the regular books and records  
16 of Duff Dyer’s employer, CJM Planning. CJM Planning’s written supervisory procedures required  
17 written notice by an associated person detailing participation in any private securities transactions. No  
18 evidence exists that Duff Dyer received written authorization from CJM Planning approving the sale of  
19 WMP membership interests. In addition, on February 7, 2001, Duff Dyer completed an annual review  
20 questionnaire for CJM Planning. Question 23 asked, “Have you sold or offered for sale any securities or  
21 investment products that had not received the prior approval by C.J.M.?” Duff Dyer answered in the  
22 negative, despite the fact that he sold WMP membership interests through at least July 2000.

Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

### CONCLUSIONS OF LAW

1. The offer or sale of WMP membership interests, as described above, by Respondent Dan D. Dyer, Jr. constitutes the offer or sale of securities as defined in RCW 21.20.005(10) and (12).

2. The offer or sale of WMP membership interests and IMC stock by Respondent Dan D. Dyer, Jr. is in violation of RCW 21.20.140 because no registrations for such offers or sales are on file with the Securities Administrator.

3. Respondent Dan D. Dyer, Jr., as described above, has willfully violated RCW 21.20.010 by making untrue statements of material fact and by omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

4. Respondent Dan D. Dyer, Jr. has committed a dishonest and unethical practice under RCW 21.20.110(1)(g), as described above, by effecting securities transactions not recorded on the regular books and records of CJM Planning without their prior written authorization. WAC 460-22B-090(2) defines such a transaction as a "dishonest and unethical practice" as that term is used in RCW 21.20.110(1)(g). Such practice is grounds for the revocation of Respondent's securities salesperson's registration and for the imposition of fines pursuant to RCW 21.20.110.

### NOTICE OF INTENT TO ORDER RESPONDENT TO CEASE AND DESIST

Pursuant to RCW 21.20.390, and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that the Respondent Dan D. Dyer, Jr. permanently cease and desist from violations of the Securities Act.



1                                   **NOTICE OF INTENT TO REVOKE REGISTRATION**

2           Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and  
3 Conclusions of Law, the Securities Administrator intends to order that the securities salesperson  
4 registration of Respondent Dan D. Dyer, Jr. be permanently revoked.

5                                   **NOTICE OF INTENT TO IMPOSE FINES**

6           Pursuant to RCW 21.20.110(1) and (4), and based upon the above Tentative Findings of Fact and  
7 Conclusions of Law, the Securities Administrator intends to order that Respondent Dan D. Dyer, Jr. shall  
8 be liable for and pay a fine in an amount of not less than \$30,000.

9                                   **NOTICE OF INTENT TO CHARGE COSTS**

10          Pursuant to RCW 21.20.110(7), and based upon the above Tentative Findings of Fact and  
11 Conclusions of Law, the Securities Administrator intends to order that Respondent Dan D. Dyer, Jr. shall  
12 be liable for and pay the costs, fees, and other expenses incurred in the conduct of the administrative  
13 investigation and hearing of this matter.

14                                  **AUTHORITY AND PROCEDURE**

15          This Order is entered pursuant to the provisions of RCW 21.20.110 and 21.20.390, and is subject to  
16 the provisions of RCW 21.20.120 and Chapter 34.05 RCW. Respondent Dan D. Dyer, Jr. may make a  
17 written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND  
18 OPPORTUNITY FOR HEARING accompanying this order. If the Respondent does not request a hearing  
19 in this matter, the Securities Administrator intends to adopt the foregoing Tentative Findings of Fact and  
20 Conclusions of Law as final, and enter a permanent order against the Respondent enjoining future  
21 violations of the Securities Act, revoking registration and imposing fines as described above.

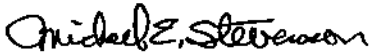
1 DATED this 8<sup>th</sup> day of December, 2003.

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5 DEBORAH R. BORTNER  
Securities Administrator

6 Approved by:

Presented by:

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8 Michael E. Stevenson  
Chief of Enforcement

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12 Andrea Y. Sato  
Enforcement Attorney